IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.791 OF 2000

The Commissioner of Income Tax
Mumbai City VI, Mumbai .. Appellant
V/s
M/s.Universal Ferro & Allied
Chemical Ltd.,Mumbai .. Respondent

Dr.P.Daniel for the Appellant.

Mr.P.J.Pardiwala with Mr.S.Dalvi i/by M/s.Mulla & Mulla & Craigie Blunt & Caroe for the Respondent.

CORAM: S.RADHAKRISHNAN &
A.S.AGUIAR, JJ.

DATE : 06.06.2005.

P.C.:

1. Heard the learned Counsel for the parties. By this Appeal, the learned Counsel for the Appellant/Revenue seeks to raise the following questions of law:-

i. "Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in setting aside the order of C.I.T. U.S.263 by holding that not only the 'Export Turnover Reserve Account' but also the amount separately credited to the 'General Reserve Account' should be taken into account for the purpose of judging whether the conditions stipulated in the said proviso to S.80 HHC (i) are satisfied or not? "

ii) "Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the C.I.T. has not pointed out the prejudice caused to the interest of revenue and hence there is no justification of S.263 ?"

2. The learned Counsel for the Revenue has brought to our notice the order passed by the Income Tax Appellate Tribunal dated 21st December, 1999 wherein the Tribunal

has construed the provisions of Section 88HHC (1) pertaining to the Assessment Year 1986-87. The main grievance of the Revenue is that the Assessee is only entitled to claim Rs.1,25,000/- by way of deduction and not Rs.2,60,330/-. There is no dispute that the Assessee had kept Rs.11,99,537/- under the General Reserve Account which was much more than the deduction claim i.e.Rs.2,60,330/-. The contention of the Revenue is that the Assessee ought to have kept a separate account as Export Turnover Reserve Account and kept atleast Rs.2,60,330/-. The Income Tax Appellate Tribunal has concurred with the order of the Assessing Officer and found the order passed by the Commissioner of Income Tax to be not justified.

3. The learned Counsel for the Respondents has brought to our notice the provisions of Section 88HHC (1) as they then stood, which read as under:-

> (1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction equal to the aggregate of -
>
> (a) four percent of the net foreign exchange realisation; and
>
> (b) fifty percent of so much of the profits derived by the assessee from the export of such goods or merchandise as exceeds the amount referred to in clause (a):
>
> Provided that the deduction under this sub-section shall not exceed the profits derived by the assessee from the export of such goods or merchandise:
>
> Provided further that an amount equal to the amount of the deduction claimed under this sub-section is

debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee.

4. Mr.Pardiwala, the learned Counsel for the Respondent has brought to our notice, the judgment of the Madras High Court, on identical issue, in the case of **Commissioner of Income Tax V/s.Sri. Jayajothi and Co.(P.) Ltd. 2001 (252) ITR 895,** wherein the Division Bench of the Madras High Court has clearly interpreted the above provision to mean that the amount to be kept in a reserve account is to be utilised for the purpose of business of the Assessee and there is no question of keeping any special reserve account for any special purpose.

5. We are in full agreement with the view taken by the Madras High Court. The statutory provision is clear which does not require any separate provision. Under these circumstances, we do not find any substance in this Appeal. Appeal therefore stands dismissed.

(S.RADHAKRISHNAN,J.)

(A.S.AGUIAR,J.)